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10/675,903	09/30/2003	Jeyhan Karaoguz	14449US02	6132

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EXAMINER

PHAN, TRI H

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/675,903

Applicant(s)

KARAOGUZ ET AL.

Examiner

Tri H. Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment/Arguments

1. In view of the Notice of Appeal/Pre-Appeal Brief Request for Review filed on July 11th, 2006, the previous final Office action mailed in April 11th, 2006, has been withdrawn. Claims 1-31 are now pending in the application. Delay in prosecution of this application is regretted.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11-20 are rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter. Claims 11-20 are drawn to functional descriptive material NOT claimed as residing on a computer readable medium.

Claims 11-20, while defining 'a computer program, stored in a machine-readable storage ... code section being executable by a machine for causing the machine to perform steps ...' (for example see claim 11, and so as claims 12-20), e.g. functional descriptive material embodied in a machine readable storage, which is not "computer-readable medium", see MPEP 2106.IV.B.1(a); and is thus non-statutory for that reasons. A computer program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The

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examiner suggests amending the claim to embody the program on “computer-readable medium” in order to make the claim statutory.

“In contrast, a claimed computer-readable medium encoded with the data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory.” - MPEP 2106.IV.B.1(a).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 7-15, 17-25 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by **Nakatsuyama, Takashi** (U.S.6,253,246; hereinafter refer as ‘**Nakatsuyama**’).

- In regard to claims 1, 11 and 21, **Nakatsuyama** discloses *the computer program, system and method for controlling transfer of media content in a communication network* (for example

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see figures 1, 4; col. 1, lines 7-10; col. 4, lines 60-66; col. 7, line 58 through col. 8, line 12;

wherein video and music on demand 'VOD/MOD' are "*media content*"), *which comprise*

receiving an input specifying at least one media file for transfer via a communication channel in the communication network (for example see figure 4; col. 2, lines 14-15, 30-32; where the request is the "*input specifying media file for transfer*");

causing a display of a plurality of quality of service options corresponding to the at least one media file for selection by a remote user (for example see figure 2; col. 2, lines 30-32; col. 5, lines 5-67; where the "*quality of service options*" is disclosed in figures 2-3; col. 7, line 58 through col. 8, line 41);

receiving a quality of service selection specifying at least one of the plurality of quality of service options (for example see col. 2, lines 30-32; col. 6, lines 38-45; steps S3-S4 in figure 4); *and*

transferring the at least one media file via the communication channel utilizing the quality of service selection (for example see col. 6, lines 38-45; step S5 in figure 4).

- Regarding claims 2, 4, 12, 14, 22 and 24, **Nakatsuyama** further discloses,

transferring at least a portion of specified parameters to a first communication device coupled to the communication network (for example see figures 2-3; col. 2, lines 44-48; col. 7, lines 58 through col. 8, line 12; wherein the choice of compression rates or ratios selected according to the user's request and genre of the data in figure 2, e.g. "*portion of specified parameters*", is transmitted to the distribution unit 20 through the communications network 30 as disclosed in col. 6, lines 38-45); *and*

wherein the first communication device is at least one of a broadband headend and a media server ('data distribution unit 20' in figure 1; for example see Abstract; col. 3, lines 27-40; where the distribution unit at the server side, e.g. "*media server*", is applicable for distributing MOD and VOD as disclosed in col. 12, lines 21-26).

- In regard to claims 3, 13 and 23, **Nakatsuyama** further discloses,
configuring at least a portion of the communication channel by a second device utilizing the transferred at least a portion of said specified parameters (for example see col. 13, lines 29-32; col. 14, lines 12-15; where the transmission channels are controlled by the controlling means, e.g. "*second device*").

- Regarding claims 5, 15 and 25, **Nakatsuyama** further discloses,
generating the received input specifying the at least one media file for transfer via at least one of a media guide, channel guide and a device guide ('guide data'; for example see col. 8, lines 64-67).

- In regard to claims 7, 17 and 27, **Nakatsuyama** further discloses, *at least one of queuing and buffering at least a portion of the at least one media file during the transferring* ('means for storing'; for example see figure 1; col. 2, line 29; col. 4, lines 5-6).

- Regarding claims 8-9, 18-19 and 28-29, **Nakatsuyama** further discloses, *presenting a cost for transferring the at least one media file via the communication channel utilizing the*

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quality of service selection (for example see col. 12, lines 10-16) and *varying the cost depending on the selected parameters that specify the quality of service* (for example see col. 12, lines 1-16).

- In regard to claims 10, 20 and 30-31, **Nakatsuyama** further discloses, *wherein the parameters for transfer of the at least one media file comprises at least one of a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of the transfer, a time to be utilized for the transfer, and a cost for the transfer* (for example see col. 5, lines 12-38; col. 7, line 58 through col. 8, line 41; col. 12, lines 1-16) and wherein controller, such as controllers 16 and 26 in figure 1, is the “*computer processor*”, for controlling the distribution data service (for example see col. 4, lines 49-67; col. 7, lines 25-57) such as VOD, MOD in the digital signal processing system as disclosed in col. 1, lines 12-22.

5. Claims 1-7, 10-17, 20-27 and 30-31 are rejected under 35 U.S.C. 102(a) as being anticipated by **Radford et al.** (U.S.2002/0144276; hereinafter refer as ‘**Radford**’).

- In regard to claims 1, 11 and 21, **Radford** discloses *the computer program, system and method for controlling transfer of media content in a communication network* (for example see page 1, para [0001], [0008]; where the multi-media content in stream data is “*media content*”, as defined in page 2, para [0017]), *which comprise*

receiving an input specifying at least one media file for transfer via a communication channel in the communication network (for example see page 2, para [0018], lines 1-5);

causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user (for example see page 1, para [0008]; page 2, para [0019]; page 4, paras [0029-0031]);

receiving a quality of service selection specifying at least one of said plurality of quality of service options (for example see pages 1-2, para [0009], lines 1-12; page 4, para [0031], lines 9-34); and

transferring said at least one media file via said communication channel utilizing said quality of service selection (for example see page 2, para [0009], lines 12-14; page 4, para [0031]).

- Regarding claims 2, 4, 12, 14, 22 and 24, **Radford** further discloses,

transferring at least a portion of specified parameters ('re-request') to a first communication device coupled to the communication network (for example see pages 1-2, para [0009], lines 1-12; page 4, para [0031], lines 1-16; wherein listing server or hosting server is the "first communication device"); and

wherein the first communication device is at least one of a broadband headend and a media server (wherein the listing server or hosting server, e.g. "media server", is for delivery the multi-media content files as disclosed in page 2, para [0017], to user's request).

- In regard to claims 3, 13 and 23, **Radford** further discloses,

configuring at least a portion of the communication channel by a second device utilizing the transferred at least a portion of said specified parameters (for example see page 3, para

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[0022]; page 4, paras [0029-0031]; wherein the user/client device, as defined in page 2, para [0016], e.g. “*second device*”, selects the desire of quality level for the streamed data).

- Regarding claims 5-6, 15-16 and 25-26, **Radford** further discloses, *generating the received input specifying the at least one media file for transfer via at least one of a media guide, channel guide and a device guide from a television screen within a home* (for example see page 4, para [0028]).

- In regard to claims 7, 17 and 27, **Radford** further discloses, *at least one of queuing and buffering at least a portion of the at least one media file during the transferring* (for example see page 4, para [0031], lines 19-23; wherein the new streamed data is cached by the system, e.g. “*buffering*”).

- In regard to claims 10, 20 and 30-31, **Radford** further discloses, *wherein the parameters for transfer of the at least one media file comprises at least one of a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of the transfer, a time to be utilized for the transfer, and a cost for the transfer* (for example see pages 1-2, para [0009]; page 2, para [0017]; page 4, para [0028], [0030-0031]) and wherein, the “*computer processor*” is inherently being in the servers or client device, for controlling the delivery of streamed video data over the communication network.

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6. Claims 1-3, 10-13, 20-23 and 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by **Meisner et al.** (U.S.6,862,102; hereinafter refer as '**Meisner**').

- In regard to claims 1, 11 and 21, **Meisner** discloses *the computer program, system and method for controlling transfer of media content in a communication network* (for example see figures 1-4B; col. 2, line 35 through col. 3, line 14; wherein digital images are “media content” as disclosed in col. 4, lines 1-8), *which comprise*

receiving an input specifying at least one media file for transfer via a communication channel in the communication network (for example see figure 2; col. 4, lines 54-61; col. 10, lines 13-14; wherein the “communication channel” is the link between user and web site as disclosed in col. 1, lines 38-45);

causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user (for example see figures 3 and 4A-B; col. 5, lines 29-44);

receiving a quality of service selection specifying at least one of said plurality of quality of service options (for example see steps 56-62 in figure 2; col. 5, lines 20-44); *and*

transferring said at least one media file via said communication channel utilizing said quality of service selection (for example see steps 64 and 70 in figure 2; col. 5, lines 44-48; col. 8, lines 28-30).

- Regarding claims 2, 12 and 22, **Meisner** further discloses, *transferring at least a portion of specified parameters to a first communication device coupled to the communication*

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network (for example see col. 5, lines 20-29; col. 8, lines 28-30; wherein the “*first communication device*” is the web site, which connects to Internet).

- In regard to claims 3, 13 and 23, **Meisner** further discloses, *configuring at least a portion of the communication channel by a second device utilizing the transferred at least a portion of said specified parameters* (for example see col. 5, line 60 through col. 6, line 14; col. 8, lines 17-27; where the “*second device*” is the user computer or web site developer for selecting settings and variations).

- In regard to claims 10, 20 and 30-31, **Meisner** further discloses, *wherein the parameters for transfer of the at least one media file comprises at least one of a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of the transfer, a time to be utilized for the transfer, and a cost for the transfer* (for example see figures 3 and 4A-B; col. 5, line 63 through col. 6, line 14) and wherein the “*computer processor*” is the microprocessor 20 in figure 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 6, 16 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Nakatsuyama, Takashi** (U.S.6,253,246).

- In regard to claims 6, 16 and 26, **Nakatsuyama** discloses the data distribution method and system for distributing video and music on demand, e.g. VOD, MOD, to the user's request as applied in part 4 above of this office action; wherein the monitor's screen of the data receiver display the selected choices from user's request inputting by keyboard or mouse (see figure 2) as disclosed in col. 5, lines 24-38; col. 9, lines 52-67; e.g. "*generating the received input from a screen within a home*". Though, **Nakatsuyama** does not explicitly disclose about "*television*"; however, it is obvious that "*television*" or monitor screen is just displaying choices.

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to use the "*television*" for display in the **Nakatsuyama**'s system, being to provide different types of display, as selected choices in the system.

9. Claims 8-9, 18-19 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Radford et al.** (U.S.2002/0144276) in view of **Nakatsuyama, Takashi** (U.S.6,253,246).

- Regarding claims 8-9, 18-19 and 28-29, **Radford** discloses all the subject matter of the claimed invention as applied in part 5 above of this office action; but fails to explicitly disclose about the "*cost*" which vary based on the selected parameters that specify the quality of service. However, such implementation is known in the art.

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For example, **Nakatsuyama** discloses, *presenting a cost for transferring the at least one media file via the communication channel utilizing the quality of service selection* (for example see col. 12, lines 10-16) and *varying the cost depending on the selected parameters that specify the quality of service* (for example see col. 12, lines 1-16).

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention was made to presenting the cost, which vary based on the selected parameters that specify the quality of service as taught by **Nakatsuyama** into **Radford**'s system, with the motivation being to provide convenience to the user for knowing the amount of fee due to the selected service as disclosed in **Nakatsuyama**: col. 12, lines 10-16.

Response to Arguments

10. Applicant's arguments in the REMARKS, pages 1-5, filed on November 11th, 2006 with respect to claims 1, 11 and 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hasegawa et al. (U.S.6,928,261), **Moynihan, Michael W.** (U.S.2002/0056119) and **Lisiecki et al.** (U.S.2002/0143798) are all cited to show devices and methods for improving data service distribution in the telecommunication architectures, which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(571) 273-8300

Hand-delivered responses should be brought to Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (571) 272-2600.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tri H. Phan
January 12, 2007



CHI PHAM
SUPERVISORY PATENT EXAMINER 1/16/07